



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      CNL, FFT

### Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- cancellation of the landlord's 2 Month Notice to End Tenancy for Landlords Use of Property (the 2 Month Notice) pursuant to section 49; and
- authorization to recover his filing fee for this application from the landlord pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another. The landlord was represented by her agent. The parties confirmed that they had exchanged their documentary evidence.

### Issues to be Decided

Should the landlord's 2 Month Notice be cancelled? If not, is the landlord entitled to an Order of Possession?

Is the tenant entitled to recover the filing fee for this application from the landlord?

### Background and Evidence

The tenant gave the following testimony. The tenant testified that he moved in on December 1, 2012 and that his current monthly rent is \$1700.00. The tenant testified that he received the Two Month Notice to End Tenancy for Landlord's Use of Property on October 24, 2019 for the following reason:

- *The rental unit will be occupied by the landlord or the landlord's spouse or a close family member (father, mother, or child) of the landlord or the landlord's spouse...*

The tenant testified that he doesn't believe that the landlord will move in as she has already rented another unit and most likely will rent the subject unit out for more money. The tenant testified that the landlord agreed as part of the condition of sale that he was entitled to remain on his current tenancy agreement. The tenant testified that the landlord has not been honest in that she's changed her mind several times and has given him mixed messages and issued the notice in bad faith. The tenant testified that he will pay the rent for January and will move out at the end of the school year so as not to disrupt his family. The tenant testified that he will work with the landlord if she is willing to come to an amicable solution.

The landlord's agent gave the following testimony. The agent testified that the landlord fully intends to move into the unit. The agent testified that the landlord is concerned that she was approved for a mortgage on the basis that she would be moving in and that she may be in breach of the mortgage agreement with the bank. The agent testified that the tenancy is on a month to month basis and that the landlord has complied with the Act by serving the proper notice in the proper manner. The agent testified that the landlord is sympathetic to the tenant's situation, but she purchased the home in September 2019 to specifically move into it. The agent testified that after obtaining the property the buyer considered her options and wants to reside in the home. The agent submits that the addendum that the tenant is relying on is not limiting or restricting from allowing the landlord to end the tenancy. The agent requests an order of possession for January 31, 2020.

### Analysis

While I have turned my mind to all the documentary evidence and the testimony of the parties, not all details of the respective submissions and arguments are reproduced here. The principal aspects of the tenant's claim and my findings are set out below.

The tenant has called into question whether the landlord has issued the notice in good faith. Residential Tenancy Policy Guideline 2 addresses the "good faith requirement" as follows.

*Good faith is an abstract and intangible quality that encompasses an honest intention, the absence of malice and no ulterior motive to defraud or seek an unconscionable advantage.*

*A claim of good faith requires honesty of intention with no ulterior motive. The landlord must honestly intend to use the rental unit for the purposes stated on the Notice to End the Tenancy. This might be documented through:*

*a Notice to End Tenancy at another rental unit;  
an agreement for sale and the purchaser's written request for the seller to issue a Notice to End Tenancy; or  
a local government document allowing a change to the rental unit (e.g., building permit) and a contract for the work.*

*If evidence shows that, in addition to using the rental unit for the purpose shown on the Notice to End Tenancy, the landlord had another purpose or motive, then that evidence raises a question as to whether the landlord had a dishonest purpose. When that question has been raised, the Residential Tenancy Branch may consider motive when determining whether to uphold a Notice to End Tenancy.*

*If the good faith intent of the landlord is called into question, the burden is on the landlord to establish that they truly intend to do what they said on the Notice to End Tenancy. The landlord must also establish that they do not have another purpose that negates the honesty of intent or demonstrate they do not have an ulterior motive for ending the tenancy.*

The tenant referred to the addendum of the Contract of Purchase and Sale that states that the Buyer and Seller mutually agree to keep the tenant on under his current tenancy agreement. The tenant confirmed that the current tenancy agreement is a month to month agreement. In addition, the addendum was left open ended with no definitive time table as to how long the Buyer was to continue on with the tenancy. Based on the documentation submitted by the tenant for this hearing, I find that the tenancy is on a month to month basis and that the addendum does not state that the tenancy must continue for a fixed period nor does it restrict the landlord from ending the tenancy.

The landlords' agent gave clear concise and credible testimony. She provided details as to the logistical and financial benefits for the owner to move into the unit and her desire to comply with the mortgage terms as outlined by her bank. In addition, the agent was very clear that she had covered the possible ramifications with the landlord if she did not do as intended and as stated on the notice. Based on the above, and on a balance of probabilities, I find that the landlord has issued the notice in good faith. As a result, the landlord is entitled to an order of possession pursuant to Section 55 of the Act. The tenancy is terminated.

The Notice remains in full effect and force. The tenant requested an extension to the effective date due to the logistical challenges of moving his family. The agent advised that the landlord is more than willing to allow the tenant to stay until the end of January

2020. Based on the information provided I am satisfied that under these unique and extraordinary circumstances, that the order of possession take effect at 1:00 p.m. on January 31, 2020.

Conclusion

The landlord is granted an order of possession. The tenancy is terminated. The tenants application is dismissed in its entirety without leave to reapply.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: January 07, 2020

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Residential Tenancy Branch